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INDIGENOUS ISSUES

Report of the working group established in accordance with Commission on Human Rights resolution 1995/32

Chairperson-Rapporteur: Mr. José Urrutia (Peru)

Introduction

1. By resolution 1995/32 of 3 March 1995 the Commission on Human Rights decided to establish an open-ended inter-sessional working group of the Commission on Human Rights with the sole purpose of elaborating a draft declaration, considering the draft contained in the annex to resolution 1994/45 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities entitled "Draft United Nations declaration on the rights of indigenous peoples" for consideration and adoption by the General Assembly within the International Decade of the World's Indigenous People. This decision was endorsed by the Economic and Social Council in its resolution 1995/32 of 25 July 1995.

2. The working group held 6 formal meetings and 14 informal plenary meetings during the period 30 November-11 December 1998. A total of 372 people attended the meetings of the working group, including 47 Governments, 47 indigenous organizations and 19 non-governmental organizations.

3. This report contains a record of the general debate. The debate which took place in the informal plenary meetings is not reflected in this report.

4. This report is solely a record of the general debate and does not imply acceptance of the usage of either the expression "indigenous peoples" or "indigenous people". In this report both terms are used without prejudice to the positions of particular delegations, where divergences of approach remain.

5. The working group was opened by a representative of the Office of the United Nations High Commissioner for Human Rights.

6. At its first meeting, the working group unanimously re-elected Mr. José Urrutia (Peru) as its Chairperson-Rapporteur.

Documentation

7. The working group had before it the following documents:

Provisional agenda (E/CN.4/1998/WG.15/1);

Draft report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 (E/CN.4/1998/WG.15/CRP.1-3);

Provisional list of participants (E/CN.4/1998/WG.15/Misc.1);

List of attendance (E/CN.4/1998/WG.15/INF.1).

8. The following background documents were made available to the working group:

Technical review of the United Nations draft declaration on the rights of indigenous peoples: note by the Secretariat (E/CN.4/Sub.2/1994/2);

Draft United Nations declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1994/2/Add.1);

Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1994/45;

Commission on Human Rights resolution 1995/32 on the establishment of a working group of the Commission on Human Rights to elaborate a draft declaration;

Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its first, second and third sessions (E/CN.4/1996/84; E/CN.4/1997/102; E/CN.4/1998/106 and Corr.1).

Participation in the session

9. The following States members of the Commission on Human Rights were represented: Argentina, Bangladesh, Brazil, Canada, Chile, China, Cuba, Denmark, Ecuador, El Salvador, France, Germany, Guatemala, India, Indonesia, Japan, Malaysia, Mexico, Pakistan, Peru, Philippines, Russian Federation, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela.

10. The following States Members of the United Nations were represented by observers: Algeria, Angola, Australia, Belgium, Bolivia, Colombia,

Costa Rica, Estonia, Finland, Iran (Islamic Republic of), Netherlands, New Zealand, Norway, Paraguay, Portugal, Spain, Sweden and Syrian Arab Republic.

11. The following non-member States were represented by observers: Holy See and Switzerland.

12. The following United Nations bodies and specialized agencies were represented by observers: United Nations Working Group on Indigenous Populations, International Labour Organization, World Intellectual Property Organization and World Trade Organization.

13. The following indigenous and non-governmental organizations in consultative status with the Economic and Social Council were represented by observers (general consultative status, special consultative status and roster):

Indigenous organizations: Aboriginal and Torres Strait Islanders Commission (ATSIC), Grand Council of the Crees (EEYOU ISTCHEE), Indian Council of South America, Indian Law Resource Center, Indian Movement "Tupaj Amaru", Indigenous World Association, Innu Council of Nitassinan, International Indian Treaty Council, International Organization of Indigenous Resource Development, Inuit Circumpolar Conference, National Aboriginal and Islanders Legal Services Secretariat (NAILSS) and Saami Council.

Non-governmental organizations: American Association of Jurists, Asian Buddhist Conference for Peace, Asian Cultural Forum for Development, Centre Europe - Tiers Monde (CETIM), Fian - Foodfirst Information and Action Network, Friends World Committee for Consultation (Quakers), Habitat International Coalition, International Centre for Human Rights and Democratic Development, International Human Rights Association of American Minorities, International Movement Against All Forms of Discrimination and Racism, International Service for Human Rights, International Work Group for Indigenous Affairs, Minority Rights Group, North-South XXI, International Organization for the Development of Freedom of Education, Society for Threatened Peoples and Worldview International Foundation.

14. The following organizations of indigenous people accredited in accordance with Commission on Human Rights resolution 1995/32 were represented by observers: Aboriginal Legal Service of Western Australia (INC), Ainu Association of Hokkaido, Ainu Association of Sapporo, American Indian Law Alliance, Asamblea Nacional Indígena Plural para la Autonomía, Asociacion Napguana, Assembly of First Nations, Associaçao das Mulheres Indigenas do Centro Oeste Paulista, Association nouvelle pour la culture et des arts populaires, Association of the Shor People, Catawba Indian Nation, Central Land Council, Christian Spiritual Youth Ministry, Comisión Internacional de Derechos de los Pueblos Originarios Andinos, Consejo de Todas Las Tierras Mapuche, Cordillera Peoples Alliance, Educational and Cultural Organization to Advance Restoration and Transition (ECOART), Fédération des Organisations amérindiennes de Guyana, Finno-Ugric Consultation Committee, Foundation for Aboriginal and Islander Research Action (FAIRA), Ikce Wicasa ta Omniciye, Indian Confederation of Indigenous and Tribal Peoples, Indigenous Woman

Aboriginal Corporation, International Alliance of Indigenous Tribal Peoples of the Tropical Forests, L'aAuravetl'An Foundation/Chukchi Council of Elders, Louis Bull Cree Nation, Lumad Mindanaw Peoples Federation, MAA Development Association, Mejlis of the Crimean Tatar People, Métis National Council, Montana Cree Nation, Navajo Nation, Nepal Indigenous Peoples Development and Information Service.

I. ORGANIZATION OF WORK

15. In his opening statement, at the first meeting, the Chairperson-Rapporteur said that the main purpose of the session was to continue moving forward. He expressed the hope that the working group would make every effort in order to achieve agreement on specific points and be able to present tangible results to the fifty-fifth session of the Commission on Human Rights. He also said that it was necessary to continue the dialogue and consultations between Governments and indigenous representatives.

16. At the first meeting the provisional agenda (E/CN.4/1998/WG.15/1) was adopted.

17. The Chairperson-Rapporteur proposed that the session begin with a general debate in a formal plenary meeting, in order to give the opportunity to make general comments to those delegations which were participating for the first time in the session and to those delegations which might wish to add further comments on the draft declaration. Otherwise, formal plenary sessions should be limited to the adoption of articles agreed upon by consensus in informal plenary meetings. He proposed then that the working group continue with an exchange of views on the principles underlying articles 1, 2, 12, 13, 14, 44 and 45 with a view to determining if there was a consensus thereon so that their adoption could be considered at a later stage. This exchange of views would be followed by a general debate on the fundamental principles contained in the draft declaration, such as the right of self-determination and its scope. Finally, he proposed that the working group consider articles 15, 16, 17 and 18 on which there had already been a wide consensus at the third session, with a view to reaching final agreement. With regard to speaking time, the Chairperson-Rapporteur proposed that participants would be allowed five minutes each, and called upon the participants to make good use of their speaking time to discuss specific articles.

18. The proposals for the organization of work were approved by the working group.

II. GENERAL DEBATE

19. Indigenous observer delegations stated that they regarded the draft declaration as being minimum standards for the promotion and protection of the fundamental rights and freedoms of indigenous peoples, and called upon the working group to recommend the immediate adoption of the draft declaration in its present form. They affirmed that the right of self-determination, as contained in article 3, was the fundamental underlying principle of the draft declaration. Concern was raised by a number of indigenous delegations that some Governments wanted to portray parts of the draft declaration as controversial.

20. The observer for the Indian Movement "Tupaj Amaru" stated that, while considering the draft declaration, special attention should be given to such notions as the recognition of the right of indigenous peoples to define themselves as peoples, the principle of self-determination, the exercise of collective ancestral ownership of land, the sovereignty over natural resources, the legal protection of cultural and intellectual property.

21. The observer for the Navajo Nation stated that the fundamental principle underlying the draft declaration was the right of self-determination of all peoples, including indigenous peoples. He said that many Governments objected to the recognition of the right of self-determination due to fear that it would imply a right to secession from existing States. Moreover, he stated that this fear was misguided and that the exercise of the right of self-determination did not threaten the security of States. He urged Governments to consider the right of self-determination as providing the legal means to protect and promote the human rights of all peoples.

22. The observer for the Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos - CAPAJ, referred to a meeting held in April 1998 by indigenous organizations in the Andean region to discuss the draft declaration. The meeting was of the view that the draft declaration was compatible with the domestic legislation of many countries of the region. He expressed the hope that the draft declaration would soon become a reality.

23. The observer for the Aboriginal and Torres Strait Islanders Commission said that during the discussion participants should take into account three principles, namely the principles of equality, non-discrimination and absolute prohibition of racial discrimination. He expressed readiness to engage in open dialogue in line with these principles.

24. The observer for the Indigenous World Association reiterated the need to put emphasis on the right of self-determination and noted that indigenous peoples should enjoy all basic human rights, such as the rights to be free, to be able to determine their own culture, their own religion, their own citizenship and their own form of government. These rights constituted the inalienable right of indigenous peoples to be themselves.

25. The observer for the International Work Group on Indigenous Affairs underlined the importance of collective rights contained in the draft declaration and stated that existing international human rights instruments did not adequately address the needs and rights of indigenous peoples; therefore, it was necessary to adopt the draft declaration as soon as possible. He urged Governments to demonstrate the political will necessary for the adoption of the draft declaration in its current form.

26. The observer for the Asian Cultural Forum on Development said that if Governments wanted the draft declaration to keep its universal character they should not insist on a definition of the term "indigenous peoples".

27. The observer for the Ainu Association of Sapporo stated that last year only two articles had been adopted and expressed concern that at such a speed it would take decades to adopt the whole text.

28. The observer for the Indian Law Resource Center expressed concern at the position of the delegation of the United States of America on the right of self-determination and stated that such a rejection of the indigenous peoples' right of self-determination was based on a narrow-minded interpretation of the concept. The observer for the Navajo Nation expressed similar views and concerns with respect to the position of the United States of America.

29. The observer for the Inuit Circumpolar Conference reiterated support for the draft declaration in its current form which, if adopted, would guarantee the political, social, economic and cultural rights of indigenous peoples and lead to a path of peace based on mutual respect. He also highlighted the importance of the right of self-determination.

30. The observer for the Saami Council stated that the draft declaration guaranteed the basic rights and fundamental political and legal rights of indigenous peoples and that it constituted a major breakthrough principally because it underlined the principle of equality for indigenous peoples; this had usually been denied on the grounds of discrimination. He further stated that although the right of self-determination of indigenous peoples could be exercised through various mechanisms and arrangements within the framework of the State concerned, it could not be qualified.

31. The observer for the International Centre for Human Rights and Democratic Development referred to article 3 on the right of self-determination and to the unnecessary fear of Governments that a recognition of this right would lead to secession.

32. The observer for the International Indian Treaty Council expressed concern over the statement made by the representative of the United States of America concerning, the term "indigenous peoples". She defined this as an attempt to redefine the scope of the draft declaration which, she said, was unacceptable.

33. The observer for the Grand Council of the Crees stated that he shared the views expressed by the observer for the International Indian Treaty Council. He welcomed the statement made by the representative of Denmark which recognized that human rights were universal and must be guaranteed to everyone without discrimination and be observed by all countries. He further stressed that the draft declaration did not mean to threaten the sovereignty, wealth or territorial integrity of States.

34. The observer for the Asamblea Nacional Indígena Plural para la Autonomía expressed concern at attempts by some Governments to delay the adoption of the draft declaration. It was also stated that a recognition of the right of self-determination for indigenous peoples would not affect the sovereignty of States.

35. The observer for the Association of the Shor People drew the attention of the working group to the fact that the living conditions of indigenous peoples in the Russian Federation had worsened and that many of them were about to become extinct because they did not have legal protection for their

rights. In this regard, he considered adoption of the draft declaration without changes a matter of urgency, as the document contained the minimum standards for the protection of the rights of indigenous peoples.

36. The Lumad Mindanaw Peoples Federation called for the adoption of the draft declaration without changes.

37. The observer for the Indian Law Resource Center stressed the importance of the dynamics and principles underlying the draft declaration and said that it would be counterproductive to consider each article without taking into account the proper context. She also highlighted the interactive nature of the underlying principles and rights stipulated in the draft declaration.

38. The observer for the Nepal Indigenous Peoples Development and Information Service drew the attention of the working group to the importance of the recognition of the existence of indigenous peoples and their right to self-determination.

39. The observer for the International Organization of Indigenous Resource Development welcomed the visit of the United Nations High Commissioner for Human Rights to his community in Canada during the previous week. Indigenous leaders from the four Cree Nations of Hobbema had discussed the draft declaration as well as other international issues with the High Commissioner.

40. The representative of the United States of America stated that her delegation considered several issues to be fundamental when negotiating the adoption of the draft declaration: (a) process - the new declaration should build upon and be consistent with the principles established in basic human rights instruments, such as the Universal Declaration of Human Rights, the International Covenants and the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. She was of the view that it should not be necessary to convert aspirations or objectives into "rights" in order to draw attention to them; (b) universality - the working group should address the scope of application of the draft declaration. She stated that although the draft declaration referred consistently to the term "indigenous peoples", it did not define it, and that it would seem important to have a universally accepted definition of the term "indigenous" so that the declaration would give rise to identifiable and practicable rights and obligations; (c) local realities - a number of formulations in the draft declaration would discourage, not encourage, support of key States, notably those with significant indigenous populations. She believed that in the context of universality it was important to take local realities into account when applying the draft declaration; (d) autonomy - she stated that the United States of America did not believe that international law accorded indigenous groups everywhere the right of self-determination, which had been interpreted to include the right to separate or secede from the rest of the society; (e) individual rights - since international law, with few exceptions, promoted and protected the rights of individuals, as opposed to groups, it would be confusing to state that international law accorded certain rights to "indigenous peoples" as such. She stated that for these reasons, her Government urged the working group to follow the approach taken by the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and refer to "persons belonging to

indigenous groups" rather than "peoples", and that "persons belonging to indigenous groups may exercise their rights, including those as set forth in this declaration, individually as well as in community with other members of their group, without any discrimination".

41. The representative of Canada stated that further consultations should be held among participants in order to achieve progress and that discussion should focus on articles 15 to 18 with a view to adoption at first reading, should sufficient consensus exist.

42. The observer for New Zealand said that the task of finding common ground would require all the participants to engage fully and constructively in a real dialogue. He considered it important to achieve tangible progress by reaching consensus on some substantive articles such as 15, 16, 17 and 18.

43. The observer for Australia said that it was important for the working group to make substantive progress during the current session, as a signal to the broader international community. This would include the provisional acceptance of the text of further articles and require compromise and creative engagement on the part of all parties. Progress was made last year with regard to articles 15 to 18, and it was now necessary to agree on those articles and to begin work on other articles. He also stated that the working group should continue to discuss issues central to the draft declaration, such as the issue of scope and the concept of self-determination.

44. The representative of Ecuador stated that his Government was committed to promoting the rights of indigenous peoples through constructive contribution in the realization of the draft declaration.

45. The observer for Denmark stated that in considering the draft declaration it was important to take into account the many different interests involved and that every effort should be made to break new ground with a view to protecting and securing the right of indigenous peoples who were particularly vulnerable and facing great problems and threats to their cultures and livelihood. It should be emphasized that no matter how long, difficult and lengthy the process might be, it could not be completed without the full participation of those concerned, namely the indigenous peoples. She also said that the building of confidence and mutual understanding between indigenous peoples and States, although less tangible, were also important criteria for success in the longer run.

46. The representative of China considered the draft declaration a good basis for discussion and appealed to all parties to demonstrate goodwill and flexibility in order to make further progress. She was of the view that the draft declaration should have a well-defined scope; however, with a view to facilitating the drafting process, her delegation agreed that the working group should consider this question at a later stage. Furthermore, she expressed the hope that indigenous groups would fully participate in the discussion.

47. The representative of Norway stated that the working group should make further efforts towards the adoption of articles 15 to 18 during the current session.

48. The representative of the Russian Federation stressed the need for the working group to continue to work on the text. He stated that his Government was ready to participate and support the work of the working group.

49. The representative of Argentina was of the view that human rights by nature were individual and expressed concern that collective rights might be exercised in a manner that would be detrimental to the enjoyment of individual rights. Nevertheless, he maintained that the collective stake-holding of rights, such as land rights, was not denied.

50. During the 4th formal meeting of the working group, held on 4 December 1998, the United Nations High Commissioner for Human Rights, Ms. Mary Robinson, addressed the working group. She greeted the participants and congratulated the Chairperson, Mr. José Urrutia, on his re-election. She referred to her recent visit to Canada where she had the opportunity to meet with Cree chiefs of the Four Nations of Hobbema.

51. The High Commissioner expressed her support for the Chairperson's proposal for the work of the fourth session, in particular the target to adopt articles 15, 16, 17 and 18. She emphasized the importance of having an open dialogue between indigenous and State representatives. Furthermore, she said that the declaration should establish minimum international standards for the rights of indigenous peoples. It should be of an aspirational nature whose purpose was to set out broad principles for the protection of the rights of indigenous peoples.

52. The High Commissioner, in her capacity as the Coordinator of the International Decade of the World's Indigenous People, encouraged Governments to adopt a declaration on the rights of indigenous peoples before the end of the Decade (2004). She also urged Governments to contribute to the Voluntary Fund for the International Decade.

53. The High Commissioner stated that progress should not be measured only in terms of the number of adopted articles but in the steps taken to achieve a genuine dialogue and deeper understanding of each other's aspirations and concerns. She assured the working group of her willingness to assist and facilitate a dialogue aimed at reaching consensus. In this regard, she stated that regional consultations should be considered.

54. The indigenous caucus extended greetings to the High Commissioner and expressed gratitude for her support and commitment to the protection and promotion of the human rights of indigenous peoples. It was emphasized that the General Assembly had identified the adoption of a declaration on the rights of indigenous peoples as one of the main objectives of the International Decade. Furthermore, it was said that the immediate adoption of a declaration was the minimum action necessary to establish adequate protection of the rights of indigenous peoples.

55. The indigenous caucus urged the High Commissioner to establish a mechanism of communication between her Office and indigenous peoples in order to enable them to keep her informed about their concerns.

56. Furthermore, the High Commissioner and the Secretary-General were respectfully requested to lend their support for the immediate adoption of the draft declaration.

57. At its 5th formal meeting, held on 10 December 1998, the working group celebrated the fiftieth anniversary of the Universal Declaration of Human Rights. The Chairman-Rapporteur referred to the Universal Declaration as the founding international human rights instrument. He said that the Declaration, which was adopted in 1948 in the aftermath of the Second World War, established common values and rights which applied to all peoples and nations. He said that the Universal Declaration had become the base document for the creation of an international system for the protection and promotion of human rights. He referred to the two International Covenants on Human Rights, the conventions against racial discrimination, against torture, and on the rights of the child as well as other conventions and declarations of the United Nations.

58. The Chairman-Rapporteur stated that the realization of human rights remained a challenge in the changing and complex reality which characterized international relations. He noted that it was now considered necessary to adopt a new global agenda in line with the present situation, in which human rights was a special part. He stated that the protection of indigenous rights should be part of such a new global agenda. He expressed the view that there was a need for an open spirit and flexibility to find new solutions. He also said that he supported the United Nations High Commissioner in her efforts to exchange ideas and to promote a "global partnership" for human rights. He concluded by encouraging Governments, indigenous peoples and non-governmental organizations to stay united in order to fight against the true dangers of the future such as hunger, extreme poverty, illiteracy and the exploitation of children.

59. The Deputy United Nations High Commissioner for Human Rights, Mr. Bertie Ramcharan, addressed the working group. He said that the High Commissioner and her entire Office strongly supported the work of the working group. He emphasized the importance of reaching consensus on a United Nations declaration on the rights of indigenous peoples and thereby establish international minimum standards on the rights of indigenous peoples. Furthermore, he complimented the work of the Working Group on Indigenous Populations for its important contribution to the process on the draft declaration. He informed the working group that the General Assembly, on 9 December 1998, had adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms ("Declaration on Human Rights Defenders").

60. The indigenous caucus, represented by Ms. Naomi Kipuri, presented the following joint indigenous declaration to the working group:

> "The noble and humane words of the Universal Declaration of Human Rights, which we celebrate today, shine brightly and with great hope for those who are suffering a long night of injustice. We appreciate the role of the new Deputy High Commissioner for Human Rights

and congratulate you on the new appointment. For so many people, especially many Indigenous Peoples, the words of the Declaration are filled with promises, and we wish they were actually true.

"ALL ARE EQUAL BEFORE THE LAW AND ARE ENTITLED WITHOUT ANY DISCRIMINATION TO EQUAL PROTECTION BEFORE THE LAW ... I wish it were true that all countries would surrender their laws that treat Indigenous Peoples unequally and deprive us of our rights.

"EVERYONE HAS THE RIGHT TO LIFE ... I wish it were true for those Indigenous Peoples in Africa and elsewhere who are driven from their lands and who can no longer adequately sustain themselves.

"EVERYONE HAS THE RIGHT TO OWN PROPERTY ... I wish it were true that the Australian Aboriginal Peoples and all Indigenous Peoples could enjoy the right to claim, unhindered, native title to our lands.

"NO ONE SHALL BE ARBITRARILY DEPRIVED OF HIS OR HER PROPERTY ... I wish it were true for the Maasai, the Miskitos, the Innu Indian Peoples and others whose lands are not yet recognized or respected.

"EVERYONE HAS THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION ... How I wish this were true for Indigenous Peoples whose sacred sites are despoiled and desecrated.

"NO ONE SHALL BE SUBJECTED TO TORTURE OR TO CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ... I wish it were true that Indigenous Peoples did not suffer so much and so often die in custody throughout the world.

"EVERYONE HAS THE RIGHT TO A SOCIAL AND INTERNATIONAL ORDER ... I wish it were true for so many Indigenous Peoples who suffer the barbarity and lawlessness of others. I wish for an international order in which we indigenous peoples have a full and equal role.

"We can still make the promises of the Universal Declaration come true. One great step toward fulfilling these promises will be for the countries of the world to adopt the Declaration on the Rights of Indigenous Peoples.

"Fifty years after States adopted the Universal Declaration of Human Rights, we ask ourselves what people they were thinking of when they wrote those words. For according to our understanding, as Indigenous Peoples, human rights cannot be simply individual rights, nor even just rights of human beings, but rather must be rights of all life, of nature, the forests, rivers, plants and animals.

"So, when we speak of our rights as Indigenous Peoples, we are speaking of rights of collectivities constituted of plants, animals and human life. Respecting human rights means avoiding the annihilation of diversity. Nature itself shows us the need for diversity for life.

"We salute the women and men who wrote and adopted the Universal Declaration in 1948. Perhaps they were thinking about the true meaning of human rights. But over the years, those that seek political and economic power have tarnished the ideals that inspired the Universal Declaration.

"Such is the case in the Amazon, for example, with the destruction of nature and mineral resources. From Alaska to Patagonia, from the Atlantic to the Pacific, in fact through the world, transnational companies are killing life itself, not just Indigenous Peoples.

"If we can achieve balanced, just and equal relations among peoples, we can prevent conflicts, discord and confrontations such as those that have taken place in Central and South America, Africa, Asia, the Pacific and in other parts of the world where Indigenous Peoples live. To respect human rights is to achieve peace."

61. The Chairman-Rapporteur recalled and supported the suggestion made by several delegations as well as the High Commissioner for Human Rights that regional consultations be held between Governments and indigenous peoples in an effort to facilitate the process of building further consensus prior to the fifth session of the working group. He agreed, on behalf of the working group, to follow up the matter of regional consultations with the High Commissioner as soon as possible.

62. In his concluding statement, the Chairman-Rapporteur said that the atmosphere of the fourth session had been better than at previous meetings and that he believed that the dialogue had taken place in an open and transparent manner and that the basis had been prepared for more tangible results in the future. He admitted that he had hoped to adopt one or more articles during the session, but added that he felt that adopting articles was not the only measure of progress. The Chairman-Rapporteur referred to the increased number of irformal consultations, especially between Governments and indigenous peoples on a regional basis, which he said had contributed to better understanding.

63. Although there was now a consensus on the principles underlying the articles considered at the present session, the Chairman-Rapporteur noted that there was still need to find consensus on the final text of those articles. Furthermore, he noted that all participants appeared more willing to take into consideration the points of view of others which would result in a better draft declaration.

64. The Chairman-Rapporteur proposed that at the next session of the working group, the delegates should concentrate on articles 15, 16, 17 and 18 for which there was already a good point of departure. He suggested that further discussion could be held on articles 1, 2, 12, 13, 14 and 44 in order to hear specific proposals with a view to improving the text. He said that the contacts between Governments and indigenous peoples should be increased at the regional level and that participants need not wait for the United Nations to take this initiative. He also appealed to Governments and non-governmental

organizations to contribute financially to the Voluntary Fund for Indigenous Populations so that assistance could be provided to indigenous participants and thereby facilitate the widest possible involvement of delegations.

Scope of application and the term "indigenous peoples"

65. The working group held one informal meeting on questions pertaining to the scope of application of the draft declaration and whether there was a need for a definition of the term "indigenous peoples". The Chairman-Rapporteur noted that all Governments had reaffirmed that the scope of application of the declaration must be universal. Most Governments expressed the view that it was not necessary to include a definition of "indigenous peoples" in the declaration. Many Governments recognized that self-identification is the most important factor in identifying who was indigenous. Some Governments expressed the view that a definition of "indigenous peoples" would be desirable for the sake of clarity, but that lack of a definition should not prevent the working group from progressing in its substantive work.

66. Indigenous representatives expressed the view that there was no need for a definition of "indigenous peoples", and that indigenous peoples had the right to identify themselves as indigenous and to be recognized as such. Furthermore, indigenous representatives stated that the scope of application of the declaration must be universal.

67. The Chairman-Rapporteur noted that, as a result of the fruitful exchange of views, there was a common understanding that the draft declaration should be of universal application, and that an agreement on the question of definition was not necessary to continue the discussion of the draft declaration.

Right of self-determination

68. The working group held three informal meetings on the principles underlying article 3. The Chairman-Rapporteur noted that all Governments had reaffirmed the principle that all peoples had the right of self-determination under international law. Some Governments had expressed the view that it was the entire peoples of a State which had the right of self-determination under international law, including the right to seek independence, among other possibilities. Other States had indicated that the scope of the concept of article 3 needed to be clarified further. A number of Governments had expressed their support for the principle of self-determination of indigenous peoples without prejudice to the sovereignty and territorial integrity of a State.

69. The Chairman-Rapporteur noted that one governmental delegation had expressed its strong support for article 3 as it stood, and stated that it would not be able to accept dilution of the language of the concept in article 3. He also noted that another governmental delegation had seen fundamental problems with the application of the right of self-determination in that context and had suggested alternative terminology. Furthermore, other governmental participants had said that the text of the Declaration had to state explicitly any consensus reached on the exercise of a right of self-determination for indigenous peoples.

70. Indigenous representatives considered that the inclusion of the right of self-determination was fundamental to the declaration and underlay all other provisions in the draft. It was stated that the right of self-determination of all peoples was established in international law, including human rights law, and must therefore also apply to indigenous peoples on a non-discriminatory basis. Many indigenous representatives stated that the unqualified right of self-determination was fundamental to the survival of indigenous peoples, and that this right should not be regarded as threatening the territorial integrity of existing nation States. Some indigenous representatives said that autonomy and self-government might be the principal means through which their right of self-determination would be exercised, but it could not be limited to those possibilities alone.

71. The Chairman-Rapporteur noted that some State delegations had expressed the view that consensus could be achieved provided that the exercise of the right of self-determination did not affect the territorial integrity or the sovereignty of States.

Articles 1, 2, 12, 13, 14, 44 and 45

72. The Chairman-Rapporteur said that the results of the informal meetings on articles 1, 2, 12, 13, 14, 44 and 45 had been positive. There was consensus on the principles underlying articles 1, 2, 12, 13 and 14; however, there still remained difficulties on the text. He noted that some governmental representatives had expressed the view that they would be able to adopt those articles as currently drafted. A number of Governments also said that they were prepared to formulate concrete proposals on those articles at the appropriate time. Some governmental delegations were open to proposals that would improve the text. The Chairman-Rapporteur stated that governmental delegations had held consultations on articles 44 and 45. Article 44 could be accepted with a reference to individual rights and when a solution could be found on the approach to the use of the term "peoples". As far as article 45 was concerned, none of the governmental delegations had difficulties with the present wording. However, as the article was a general provision that affected the entire draft declaration, there was consensus that its final form should be considered after the other articles had been dealt with.

Articles 15, 16, 17 and 18

73. With regard to articles 15, 16, 17 and 18, the Chairman-Rapporteur asked the governmental delegations to hold informal consultations in order to try to consolidate the different proposals presented by Governments at the third session of the working group, with a view to facilitating the discussion and adoption during the present session. As a result of those consultations, attended by a large number of governmental delegations, the Chairman-Rapporteur received an informal paper in which different governmental positions pertaining to those articles were reflected. The paper indicated that some States could accept the original wording of some or all of the articles, while other States made proposals that would be contained in annex 1 to the report of the session.

74. The Chairman-Rapporteur presented the paper to the working group as a basis for discussion on articles 15, 16, 17 and 18.

75. The Chairman-Rapporteur noted that some States had expressed the view that their proposals had not been reflected in the paper. He also noted that a number of States had indicated that they could accept the existing wording of the article or that they wished to make only minimal changes to the text or that they were prepared to consider proposals that might strengthen the text of the article.

76. With regard to article 15, alternative wording to the term "indigenous children" was proposed, including "indigenous individuals" and "persons belonging to indigenous groups/peoples". With regard to the level and form of education, some suggested that such rights should be exercised "on at least the same basis as the other members of the national society/community." Some delegations proposed that indigenous children living outside their communities should have "reasonable access" to education in their own culture and language, rather than "have the right to be provided access" to such education. There was no consensus among Governments on whether to use "should" and "shall" in this article, as well as in other articles of the draft declaration. This reflected the unresolved question of whether the declaration should be aspirational only, without establishing any firmer obligations.

77. With regard to article 16, some Governments proposed that the wording "States shall" should be added to establish an obligation and to place the obligation on States. With respect to the obligations of States, it was proposed to add "at the appropriate level" in order to reflect the federal systems of some countries.

78. With regard to article 17, some Governments proposed that these rights should be exercised "on the same basis as other members of the national society" to establish their own media in their own languages.

79. With regard to article 18, some Governments proposed to include alternative wording which reflected that international as well as national labour law expressed rights in term of the individual rather than collectivities.

80. The Chairman-Rapporteur noted that the indigenous caucus had expressed grave concern in relation to the preparation of the paper under discussion. Indigenous representatives had not participated in the elaboration of the paper. It was also stated that the working group was not engaged in a process of drafting or negotiating, and that indigenous representatives were prepared to discuss the official United Nations document approved by the Sub-Commission. In response, the Chairman-Rapporteur confirmed that the paper was not a Chairman's document or a Secretariat document, and that the working group was not engaged in a drafting or negotiating exercise.

81. Numerous indigenous delegations made interventions stating that the proposals of State delegations had not refuted the firm presumption of the integrity of the existing text; furthermore, such refutation would have to take the form of proposals that would be reasonable and necessary, and improve and strengthen the existing text, and be consistent with the fundamental principles of equality, non-discrimination and the prohibition of racial discrimination.

82. The Chairman-Rapporteur noted that indigenous representatives had stated their strong support for articles 15, 16, 17 and 18 as currently drafted, and that they had called for the adoption of those articles in their present form. (The current wording of the articles is reflected in annex II.)

83. The Chairman-Rapporteur noted that numerous indigenous delegations had, inter alia, expressed the view that the proposal to introduce square bracketing in the reference to "indigenous peoples/indigenous communities/persons belonging to indigenous groups/peoples" failed to pass the test of consistency with the principle of equality. The success of the working groups's work would depend on recognition of the equality of indigenous peoples as distinct peoples. In relation to the question of whether to use "should" or "shall", it was stated that the term "shall" was found in the Universal Declaration of Human Rights, as well as a range of other United Nations declarations. In relation to the wording "established at the appropriate level of government", it was unclear what a reference to federal systems of government in the draft declaration would achieve. It was a basic tenet of international law that in federal systems of government, it was the Federal Government that bore international responsibility for breaches of a State's international obligations. In relation to States' concerns about the resource implications of article 15, the fact that the realization of paragraph 2 was likely to be resource intensive and might encounter practical difficulties did not justify the imposition of a limitation. The key to understanding the resource requirements of article 15, and most other provisions of the draft declaration, was to be found in the first sentence of article 37. States were to take "appropriate" measures to give effect to the provisions of the draft declaration. The interpretations of "appropriate" would be conditioned by a range of factors, including budgetary constraints, practical difficulties of service delivery and other factors. In relation to the proposals of some State delegations to include a gender aspect and/or wording referring to "individual rights", it was stated that article 43, adopted by the working group last year, adequately addressed those concerns.

84. While accepting the current text, certain indigenous representatives said that they would be open to considering any proposal that might strengthen the text of the articles concerned.

85. The Chairman-Rapporteur said that the results of the three informal meetings on articles 15, 16, 17 and 18 had been positive and encouraging. He welcomed the fruitful exchanges of views and noted that there was a growing consensus in regard to those articles. Broad consensus on the underlying principles of the articles did not necessarily mean, however, that there was consensus on the final wording. There was a consensus among governmental delegations that their proposals (annex I) should be taken into account in the future work on the draft declaration, as well as other proposals that could be presented.

86. The Chairman-Rapporteur noted that a great majority of indigenous representatives had urged those governmental delegations which still had concerns and problems in relation to the articles under consideration to make every effort to achieve consensus.

Annex I

PROPOSED AMENDMENTS TO ARTICLES 15-18 FOR FUTURE DISCUSSION

Some States can accept the original wording of some or all of the following articles. Other States have made the proposals set out below, with the original wording shown in bold.

Article 15

[**Indigenous children**/Indigenous individuals/Persons belonging to indigenous [groups/peoples]/Indigenous boys and girls] **have the right to all levels and forms of education of the State** [on [at least] the same basis as the other members of the national community/society]. [**All indigenous peoples also have this right and**] [Indigenous peoples/Indigenous communities/Persons belonging to indigenous [groups/peoples]] [should] [also] have **the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning** [and in accordance with applicable education standards [and procedures] established [at the appropriate level of government/by the competent authority in consultation with these [peoples/persons].]

Indigenous children living outside their communities [**have the right to be provided**] [an education] shall/should have reasonable **access to education in their own culture and language**.

[States [**shall**/should] **take effective measures to provide appropriate** [**resources**/measures] **for these purposes**.]

Article 16

[**Indigenous peoples have the right to have**] [States [shall reflect appropriately/should reflect at the appropriate level]] [**T**]**he dignity and diversity of** [**their**] indigenous **cultures, traditions, histories and aspirations** [.] [shall/should be] [equally/**appropriately**] [**reflected**] **in all forms of education and public information** at the appropriate level.

States [**shall**/should] **take effective measures, in** [**consultation**/cooperation] **with the indigenous** [**peoples**/populations/communities] [**concerned**], in order **to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among** [**indigenous** [**peoples**/populations/communities] **and**] **all** [other] **segments of society** [, including indigenous [peoples/populations/communities]].

Article 17

[**Indigenous peoples**/Persons belonging to indigenous [groups/communities/peoples]], [on the same basis as other members of the national [community/society]/subject to national legislation], **have the right to establish their own media in their own languages** [according to national

[norms/procedures]] [. **They also have**] and [[equal rights of access to/**the right to**] [**equal access to**/equitable access to / access]] **all forms of non-indigenous media.**

States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. [States, without prejudice to ensuring full freedom of expression, should promote/encourage that media adequately reflect indigenous cultural diversity.]

Article 18

[**Indigenous peoples**/Indigenous individuals/Persons belonging to indigenous [groups/peoples]] [**have the right to**]/[shall/should] **enjoy fully all rights** [deriving from/**established under**] [[applicable] **international labour law** [applicable to the state] **and national labour** [**legislation**] law /treaties ratified by the State in which they live and applicable national labour law]. [Indigenous children should be protected from [exploitative forms of child labour/the worst forms of child labour].]

[**Indigenous individuals**/Persons belonging to indigenous [groups/peoples]] **have the right not to be subjected to any discriminatory conditions of labour, employment or salary**/[discrimination in conditions of employment and work]. [States shall ensure through their legislation that indigenous individuals are not subjected to any discriminatory conditions of labour, employment or salary.]

Annex II

ARTICLES 15-18

Indigenous representatives and some governmental delegations supported the current wording of articles 15, 16, 17 and 18. The articles are reproduced below.

Article 15

Indigenous children have the right to all levels and forms of education of the State. All indigenous peoples also have this right and the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

Indigenous children living outside their communities have the right to be provided access to education in their own culture and language.

States shall take effective measures to provide appropriate resources for these purposes.

Article 16

Indigenous peoples have the right to have the dignity and diversity of their cultures, traditions, histories and aspirations appropriately reflected in all forms of education and public information.

States shall take effective measures, in consultation with the indigenous peoples concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all segments of society.

Article 17

Indigenous peoples have the right to establish their own media in their own languages. They also have the right to equal access to all forms of non-indigenous media.

States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity.

Article 18

Indigenous peoples have the right to enjoy fully all rights established under international labour law and national labour legislation.

Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour, employment or salary.

Annex III

COMMENTS BY THE NON-GOVERNMENTAL ORGANIZATION MOVIMIENTO INDIO "TUPAJ AMARU" ON ARTICLES 15, 17 AND 18

Article 15

All indigenous peoples have a collective and individual right to free, comprehensive and diversified education at all levels and in all forms of basic, middle and higher education in their own languages, including bilingual education. They are also entitled to formulate policy for their own education systems and teaching institutions, [and to] manage and administer for themselves the resources assigned to education.

States recognize education as their highest function and agree to orient teaching towards the full development of the human personality, providing sufficient resources to carry out and comply with the provisions of this declaration.

Article 17

Indigenous peoples have the right to establish their own media in their own languages. They also have the right to equal access to all existing mass communications media, [and to] set up radio and television broadcasting networks in indigenous languages with a view to inculcating respect for their identity in indigenous people and fostering friendship among different social groups.

States shall take appropriate action to ensure that State-owned media duly reflect multinational and multicultural diversity.

Article 18

Under the international conventions adopted by ILO, indigenous peoples have the right to pursue their material welfare and intellectual development in dignity. Every indigenous person has the right to work without distinction or discrimination on grounds of his identity, and the right to "equal pay for equal work", to satisfactory health conditions and to social security.

Pursuant to their labour legislation, States shall take appropriate action to ensure effective protection in matters of hiring and working conditions, especially legal protection for children against illegal exploitation, that might have damaging consequences for their health, education and physical and mental development.